

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

TERRY LEONARD, STEVEN
KENDLEY, MICHAEL GEHL,
BEN WOODS, and LEVI READ,

CV 12-25-M-DLC-JCL

Plaintiffs,
vs.
ORDER

ALAN JAY DOYLE, MICHAEL
SARGEANT, DAN DURYEE, and
DAN YONKIN,

Defendants.

Plaintiffs Terry Leonard, Steven Kendley, Michael Gehl, Ben Woods, and Levi Read filed a motion to compel Frank Bowen, a Game Warden employed by the State of Montana, to comply with a Fed. R. Civ. P. 45 subpoena they had issued to him on October 2, 2012. The subpoena, together with a notice of deposition issued by Plaintiffs' counsel, directed Mr. Bowen to appear for his deposition, and to bring certain documents identified in the subpoena with him to the deposition.

Prior to his deposition, Mr. Bowen provided the requested documents to John Lynch, Agency Legal Counsel for the Montana Fish, Wildlife & Parks. Mr.

Lynch instructed Mr. Bowen not disclose the documents at his deposition, and instead to leave the documents with the Fish, Wildlife & Parks office. By letter dated October 9, 2012, Mr. Lynch then proposed to Plaintiffs' counsel that the documents be delivered to the Court for its in camera inspection to determine whether the documents could be released. The documents have not been submitted to the Court. They were, instead, apparently brought to Mr. Bowen's deposition, but they were held under seal and were not released to Plaintiffs' counsel, as instructed by Mr. Lynch. Therefore, by Order entered December 12, 2012, the Court directed John Lynch to file a response to Plaintiffs' motion to compel on behalf of Mr. Bowen.

In his response brief, Mr. Lynch asserts the documents that are the subject of the referenced subpoena are "privileged" because they are protected from disclosure by the Montana Criminal Justice Information Act, Mont. Code Ann. § 44-5-101 et seq. Mr. Lynch explains that in lieu of releasing the documents to Plaintiffs' counsel at Mr. Bowen's deposition, he instead produced a "privilege log" describing the documents. He does not, however, identify any legal authority under the Montana Criminal Justice Information Act that characterizes the documents he withheld as protected by a "privilege." In essence, Mr. Lynch appears to be suggesting the documents should be subject to a protective order.

The Montana Criminal Justice Information Act protects from disclosure and dissemination certain confidential or private information. Mont. Code Ann. § 44-5-301 et seq. Although the information is statutorily protected from disclosure, it does not qualify as information that is protected by a “privilege.”

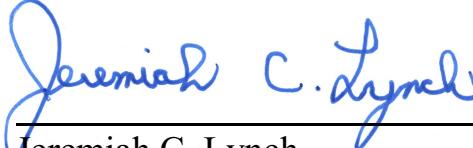
Instead, the Montana Criminal Justice Information Act permits “dissemination of confidential criminal justice information [...] to those authorized by law to receive it[.]” Mont. Code Ann. § 44-5-303(1). A person is “authorized by law” to receive confidential criminal justice information when the person has obtained a subpoena requiring disclosure of the information. Mont. Atty. Gen. Op. No. 119, 42 Mont. Op. Atty. Gen. 454, 1988 WL 482141, *9 (Oct. 31, 1988).

Because Plaintiffs obtained a subpoena, they are “authorized by law” to receive the information that Mr. Lynch asserts is subject to the Montana Criminal Justice Information Act. Therefore, IT IS HEREBY ORDERED that Plaintiffs’ Motion to Compel is GRANTED. On or before **January 2, 2013**, Mr. Bowen and/or the Montana Fish, Wildlife & Parks shall produce the subject documents to Plaintiffs’ counsel for review. On or before that date, however, Mr. Bowen or the Montana Fish, Wildlife & Parks may move for a protective order regarding further dissemination of the subject criminal justice information beyond its disclosure to the named Plaintiffs’ and their counsel if the parties cannot reach an agreement as

to a stipulated protective order.

The Clerk of Court shall serve a copy of this Order on the parties, and on John Lynch, Agency Legal Counsel, Montana Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701.

DATED this 20th day of December, 2012.


Jeremiah C. Lynch
Jeremiah C. Lynch
United States Magistrate Judge